



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
(Redacted))	ISCR Case No. 16-03361
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

08/25/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s spouse is a dual citizen of her native Russia and of the United States since her U.S. naturalization in April 2017, but her parents and sister are resident citizens of Russia. Applicant and his spouse also have some friends with Russian citizenship, who are legal U.S. permanent residents. Applicant’s lifelong ties to the United States, which include over a decade as a U.S. military officer, mitigate the risk of undue foreign influence raised by his family ties to Russia. Clearance is granted.

Statement of the Case

On December 9, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guideline B, foreign influence, and explaining why it was unable to grant or continue security clearance eligibility to him. The DOD CAF acted under Executive Order 10865 (EO), *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines for Determining Eligibility for access to Classified Information (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on December 29, 2016, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 2, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 9, 2017, I scheduled a hearing for March 27, 2017.

I convened the hearing as scheduled. Two Government exhibits (GEs 1-2) and six Applicant exhibits (AEs A-F) were admitted into evidence without objection. Additionally, at the Government's request and without objection from Applicant, I agreed to take administrative notice of several facts pertinent to the Russian Federation (Russia). Applicant and his spouse testified, as reflected in a hearing transcript (Tr.) received on April 4, 2017.

I held the record open for one month after the hearing for Applicant to submit facts for administrative notice and additional documentary evidence. On April 26, 2017, Applicant submitted his spouse's U.S. Certificate of Naturalization, which was admitted as AE G without no objection from the Government. Applicant did not submit any additional evidence or facts for administrative notice. The record closed on April 28, 2017.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4 establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require national security eligibility or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Administrative Notice

At the hearing, the Government requested administrative notice of several facts pertinent to Russia, as set forth in an Administrative Notice request dated February 8, 2017. The Government's request was based on excerpts of U.S. government publications, statements for the record before Congress, and press releases and statements from U.S. government entities as referenced in the document.²

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

² The Government's request for administrative notice was based on February 9, 2016, and January 29, 2014, statements for the record by the DNI before U.S. Senate committees; on the Office of the National Counterintelligence Executive's *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*, dated October 2011; on press releases and press statements from the U.S. Department of Justice, the U.S. Attorney's Office, the U.S. Department of Commerce, the U.S. State Department, and the U.S. Department of Homeland Security; on the State Department's *Country Reports on Human Rights Practices for 2015-Russia*, published April 13, 2016, *Country Information: Ukraine*, dated April 22, 2016, and *Russia 2016 Crime & Safety Report: Moscow*, dated January 27, 2016; and on a Congressional Research Report for Congress *Armenia, Azerbaijan, and Georgia: Political Developments*

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intention to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant confirmed his receipt of the Government's Administrative Notice request with extracts of the source documents. Applicant filed no objections to the facts set forth in the Government's Administrative Notice request. He accepted an opportunity to propose additional facts for administrative notice, but did not submit any facts for administrative notice.

Concerning the press releases of reported criminal activity of Russian agents and spies and of export violations on Russia's behalf, they were presented by the Government apparently to substantiate that Russia engages in espionage against the United States and actively pursues collection of U.S. economic and proprietary information. Neither Applicant, his spouse, nor any of her family members were implicated in that criminal activity. With that caveat, the facts administratively noticed are set forth below.

Findings of Fact

The SOR alleges under Guideline B that Applicant's spouse is a Russian citizen (SOR ¶ 1.a); that his parents-in-law (SOR ¶ 1.b) and sister-in-law (SOR ¶ 1.c) are resident citizens of Russia; and that Applicant and his spouse have several friends who are Russian citizens (SOR ¶ 1.d). When he responded to the SOR allegations, Applicant admitted the foreign ties, but he also explained that his spouse has applied for U.S. citizenship; that his parents-in-law do not speak English and are not affiliated with the Russian government; that he has casual relations and infrequent contact with his sister-in-law; and that his and his spouse's five Russian friends have been legal U.S. residents for several years and work primarily in the hospitality industry. He described his contacts with them as "minimal and typically only when attending a special occasion." (Answer.) After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 35-year-old computer systems engineer with bachelor's and master's degrees earned while he was serving on active duty in the U.S. military. As of his hearing, he was on track to be awarded in May 2017 another master's degree. He enlisted in the U.S. military as a high school senior, and he entered active duty on his high school graduation in June 2000. While in training, he was selected for an officer candidate program. He attended college from May or June 2002 to June 2005, and on earning his bachelor's degree, he was commissioned as an officer. He then served honorably on active duty until December 2015 when he was discharged at the rank of lieutenant after twice being passed over for promotion to lieutenant commander. Applicant held a secret clearance for his duties in the U.S. military until 2005, when his clearance eligibility was upgraded to top secret. Two years later, he was granted sensitive compartmented information (SCI) access eligibility that he held until May 2010. On his

and Implications for U.S. Interests. I was provided the web addresses for the full articles.

discharge, Applicant began working for his current employer, a defense contractor. He holds a DOD secret clearance for his present duties. (GEs 1-2; AE F; Tr. 13, 27-28, 32.)

Applicant was transferred to a shore command in May 2010. Married to his first wife at the time, he intended to leave the military at the end of his enlistment term. In May 2011, he hired a native Russian speaker (current spouse) to tutor him in the language. He had taken some Russian language courses in high school and wanted to become fluent enough to include the skill on his resume. Applicant reported to his military command that he was taking Russian lessons from a Russian citizen. After about a year of lessons, he decided to remain in the military because a position became available that would give him the opportunity to earn his master's degree. Applicant began his graduate studies in May 2012. He and his first wife reconciled briefly that summer, but after some couples' counseling, they decided to end their marriage. A few months later, Applicant invited his current spouse to join him in a business venture. They had previously discussed starting a small import business. For seven days in September 2012, Applicant attended a trade show in Russia to find potential suppliers. He also did some sightseeing while in Russia. He reported his trip beforehand to his command because he had to obtain a country clearance. On his return, Applicant reported his contacts with various suppliers, but he made no lasting contacts from that trip. (GE 1; Tr. 33-34, 41-49, 54.)

In September 2012, Applicant's spouse joined him, and in November 2012, they began sharing an apartment. Soon thereafter, they began dating. Applicant reported to his command's security officer that he was living with a Russian national. In late January 2013 or early February 2013, he and his spouse opened a small gift shop specializing in imported Eastern European food and other goods. They used online suppliers, and most of their inventory came from U.S.-based suppliers. One supplier was based in Russia. Applicant funded most of their start-up costs, including a \$10,000 down payment on the storefront and the expenses for some initial equipment and inventory. He sponsored her for a B-1 visa, and while her application was pending, she operated the business while he pursued his graduate studies. (GE 1; Tr. 33-34, 44-51, 88.)

A few months after Applicant's divorce from his first wife was final, he and his spouse married in July 2013. Applicant reported his new family relations in Russia (parents-in-law and sister-in-law) to his command. In December 2013, Applicant and his spouse traveled to Russia for over two weeks to spend the holidays with her family. They traveled separately to Russia. On arriving in Moscow, Applicant received a country briefing from U.S. Embassy officials before traveling on to meet his spouse at her family's home in a city in south central Russia. (GE 1; Tr. 54-57, 75.)

In June 2014, Applicant and his spouse had a daughter, and Applicant was awarded his first master's degree. They relocated for his new duty assignment as an assistant project officer, and had a couple operate the shop for them until October or November 2014. In January 2015, Applicant and his spouse closed the business. (GE 1; Tr. 51.) In May 2015, Applicant and his spouse took their daughter to Russia to see his spouse's family. Applicant reported this trip to his command and received an appropriate

briefing before his travel. After he returned, he reported that he had contact with his Russian in-laws. (Tr. 57-58.)

About 18 months into his military assignment, Applicant was passed over for promotion in rank a second time. He chose to resign his commission rather than continue his service in the reserves, and in late December 2015, he was granted an honorable discharge. Applicant and his family relocated to their present locale for his new job in the defense industry. (GE 1; Tr. 34, 38.) His spouse became pregnant shortly thereafter with their second child, who was born in August 2016. (Tr. 35.)

On January 7, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). Applicant reported his spouse's then Russian citizenship, but also indicated that her initial two-year U.S. green card was being renewed. He disclosed his parents-in-law's citizenship and residency in Russia, their employments in Russia, and contacts with them on a weekly basis via Skype. Applicant's father-in-law is the head of financial security for a privately-owned bank in Russia. Applicant described his father-in-law's work as involving risk management. According to Applicant's spouse, her father checks "the [private] bank's client applications collateral." Her mother works in housekeeping for a retailer that sells interior doors. (Tr. 78.) In response to an SF 86 inquiry into any close or continuing contact with a foreign national in the last seven years, Applicant indicated that he had weekly contact by electronic media with his spouse's sister, a resident citizen of Russia. He also reported weekly in-person contact with his spouse's best friend, a Russian citizen residing in the United States; and monthly contact by electronic media three other female friends of his spouse who have Russian citizenship but reside in the United States. Concerning foreign business ventures, Applicant reported his and his spouse's co-ownership of the small retail store that sold Eastern European goods from January 2013 to June 2014. Applicant also disclosed his foreign travel to Russia in September 2012 to find potential suppliers for that business, and in December 2013 and May 2015 to visit family. In response to an inquiry about sponsoring a foreign national in the last seven years, Applicant indicated that his spouse had come to the United States as a student in June 2009 and that he sponsored her for U.S. permanent residency after they married. Under additional comments, Applicant explained in part:

With regard to foreign contacts, my only foreign connections are through my wife who is a Russian citizen until she is able to apply for US citizenship. The listed friends and family are the only ones with whom I have continuing contact, though I have met several of her friends briefly in Russia and the United States: some of these are on my social media though I only occasionally review their posts. None have taken an interest in my work. (GE 1.)

On July 20, 2016, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Concerning his foreign contacts, Applicant indicated that he was bound by affection to his sister-in-law in Russia and to four friends

of his spouse who have Russian citizenship but reside in the United States. He denied any vulnerability to blackmail or coercion because of these relationships. (GE 2.)

In July 2016, Applicant, his spouse, and their daughter traveled to Russia for 14 days to visit his spouse's family. He reportedly complied with his reporting requirements and completed required paperwork online. Applicant and his spouse have been trying to visit her family in Russia once a year, although it may be a bit longer between trips in the future. They have encouraged her parents to visit them in the United States. (Tr. 59-61.)

During each of their trips to Russia, Applicant and his spouse stayed with her parents. Each time, they complied with a requirement to register their stay with the local civil authorities. Applicant's spouse listed her passport information, Applicant's name and occupation, where they were staying, and her father's name. As for Applicant's occupation, they "usually" wrote that he was in the U.S. military but nothing about his position.³ (Tr. 93.)

Applicant's spouse first came to the United States at age 18 as an exchange student in the summer of 2006. She returned to the United States in the summers of 2007 and 2008. After graduating from a Russian college in June 2009, she came to the United States as an exchange student as in previous years with no intention to stay permanently. At the end of that summer, she and her best friend (Ms. X), who is also from Russia, decided to study in the United States. They were accepted at a local community college and acquired student visas. Applicant's spouse graduated with an associate degree in December 2011. (Tr. 81-86.) She has never been involved in any political activities in Russia or the United States. She had never worked for or been associated with the Russian government. (Tr. 76-77.) She intends to live permanently in the United States. (Tr. 95-96.)

³ Applicant testified about the form as follows:

It's just if you're going to stay in Russia for longer than a certain amount of time, I believe seven days they require that you fill this out so they can keep track of foreigners. And then it gets stamped when you leave the country and they just verify that you have it when you leave the country or it could be a, if you didn't have the card and they saw you were there for longer than that period of time then it would be a potential for them to pull you aside and ask more questions before they let you leave. (Tr. 100.)

Information from the U.S. State Department indicates that U.S. citizens traveling on U.S. passports are required to have a current U.S. passport and appropriate visa for entry to Russia, and to obtain a visa, there must be a Russian sponsoring organization or individual. Foreigners entering Russia are fingerprinted. Stays in Russia exceed seven days require registration of both visa and migration card with the General Administration for Migration Issues of the Ministry of Internal Affairs, and passports and migration cards must be carried at all times while in Russia. The migration card is provided by border officials on entry into Russia. See U.S. State Department's publication *Quick Facts—Russia*, update on January 12, 2017, which may be accessed at www.state.gov. Applicant's spouse, who as a Russian citizen presumably sponsored Applicant's entry, testified that they had no problems either at the border or while in Russia during any of their trips. (Tr. 93.)

Applicant's spouse understands, and the U.S. State Department confirms, that Russia allows dual citizenship.⁴ Applicant indicated that his spouse planned to relinquish her Russian passport and foreign citizenship after she acquired her U.S. citizenship. (AE E.) Applicant's spouse testified that she was "ready" to swear allegiance to the United States and surrender her Russian passport. (Tr. 77.) Yet, she subsequently expressed her desire to keep her Russian citizenship because she would not need a visa to travel to Russia. (Tr. 97.) On April 20, 2017, she became a naturalized U.S. citizen. (AE G.) There is no evidence that she has taken any steps to renounce her Russian citizenship.

Applicant's mother, three brothers, and three sisters, are all native U.S. citizens residing in the United States. His father is now deceased. Applicant's oldest brother and two of Applicant's sisters were born on U.S. military bases in the United States. (GE 1.) Two of Applicant's brothers and one of his sisters served in the U.S. military. (Tr. 32.)

Applicant's spouse contacts her parents by Skype weekly. Sometimes she sends a couple of texts or photos on social media via Vk.com, the Russian equivalent to Facebook. (Tr. 78-79, 89.) Applicant converses with his parents-in-law about once a month during his spouse's Skype sessions. His parents-in-law do not speak English. Applicant's conversation with them is limited to pleasantries in Russian.⁵ (AE E; Tr. 61-65.) They have only been outside Russia one time. (Tr. 59.) His parents-in-law own an apartment and a small, one-bedroom vacation cottage in Russia. They are aware that Applicant performs engineering work on behalf of the U.S. government and that he had been a military officer, but not about the specifics of his work. Applicant's spouse informed her parents about Applicant's discharge from the U.S. military when he was looking for employment. (Answer; Tr. 72-73, 79.)

As of late March 2017, Applicant's spouse's sister had recently graduated from a Russian college, was unemployed, and lives with her parents in Russia. (Tr. 80.) She had just returned home to Russia after teaching English in China for a year and was considering applying to school in the United States. Applicant has informed his sister-in-law that he would be willing to sponsor her to come to the United States to further her education. Applicant had only occasional contact with his sister-in-law when she was in Russia and "next to no contact with her" when she was in China. (AE E; Tr. 66-68.) Applicant's spouse does not believe that her family members in Russia would try to

⁴ In its *Quick Facts, supra*, the State Department reports the following:

Anyone entering Russia who has claim to Russian citizenship, regardless of any other citizenship held, is fully accountable to the Russian authorities for all obligations of a citizen, including the required military service; U.S.-Russian dual nationals and Russian citizens who are Legal Permanent Resident of the United States must register their dual nationality/foreign residency with Russian authorities; and U.S.-Russian dual nationals must both enter and exit on a Russian passport.

⁵ Applicant testified about his conversations with her parents that he "can't have any in-depth conversations so it gets painful to try to have my wife translate constantly." (Tr. 63.) When asked to comment on his facility with the Russian language as it relates to his communication with her parents, Applicant's spouse responded, "Normally we just, you guys discuss the kids, how the weather is like. So basic conversation, basic Russian." (Tr. 79.) However, Applicant indicated on his resume (AE F) that he is fluent in Russian.

influence or coerce Applicant to divulge sensitive or classified information. (Tr. 80.) They have no current affiliation with Russia's government and are not politically involved. (Tr. 78.) His father-in-law served in Russia's military more than 30 years ago. (AE E.)

Applicant's spouse has four female friends who are Russian citizens with U.S. legal permanent residency and are married or engaged to U.S. citizens. She met them through school or past jobs. Ms. X, her closest friend, is married to a U.S. citizen and has a small son. She works part time at a bed and breakfast. Applicant's spouse sees this friend monthly. One of Applicant's spouse's friends is a waitress at a restaurant where her spouse is the head chef. Another friend is working on her nursing degree and is married to a police officer. A fourth friend moved to an adjacent state shortly after Applicant and his spouse returned to the area, so Applicant has not seen her in several months. Applicant has known these friends of his spouse since December 2011. Applicant has in-person contact with his spouse's friends primarily on major holidays or on special occasions, such as birthdays, although he has had more frequent contact with Ms. X recently because Applicant and his spouse were looking to purchase a home in this friend's area. (AE E; Tr. 68-71, 83.)

Character References

Applicant was recruited for his current position by a former military officer familiar with Applicant's experience and knowledge of ballistic missile submarines. This co-worker has worked alongside Applicant on modernization and reliability projects on behalf of the U.S. military. To his knowledge, Applicant has supported all security measures and proven himself to be a valued contributor to the company and the government organization they support. He attests to Applicant's integrity and honesty and endorses him for continued security clearance eligibility. (AE A.)

Applicant's officemate has worked in the defense industry as a contractor for 18 years. She is aware that Applicant's security clearance eligibility is at risk because of his marriage to a Russian citizen and the foreign ties "by default" because of the marital relationship. She described Applicant and his spouse "as good and honorable people, very intelligent, and very supportive of our country." Applicant's spouse has been supportive of Applicant and "intensely grateful for the opportunity to be in this country and become a citizen." Aware that Applicant and his spouse were in the process of purchasing a home in the area and that they intend to raise their two children in the United States, this co-worker urges that Applicant be allowed to retain his security clearance eligibility. (AE B.)

An operations manager familiar with Applicant's work performance as an active duty lieutenant from September 2014 through December 2015 indicates that Applicant was enthusiastic and assertive in completing his tasks. He found Applicant to be supportive of the United States, the military, and its mission, and "vigilant observing all protocols regarding foreign travel as he and his young family traveled to his wife's home." This supervisor reports having had numerous social interactions with Applicant's spouse, who he described as "never even minimally invasive regarding workplace of personal

relationships or life/work history.” In his opinion, the loss of security clearance eligibility for Applicant would be “a punitive and unjust repercussion to the individual and his family simply due to the birthplace of his wife.” (AE D.)

A longtime friend of Applicant’s since they were in middle school together expressed “complete faith in his character, intelligence, drive for excellence, and in his loyalty to the United States of America.” This friend has met Applicant’s spouse and is aware that Applicant has Russian in-laws. He has seen no indications that Applicant could be coerced into betraying his country because of his foreign family ties. (AE C.)

Administrative Notice

Russia is a highly centralized, authoritarian political system dominated by President Vladimir Putin. Its bicameral federal assembly lacks independence from the executive branch. The United States and Russia established diplomatic relations in December 1991 following the dissolution of the Soviet Union. The United States has long sought a full and constructive relationship with Russia and supported Russia’s integration into European and global institutions and a deepened bilateral partnership in security cooperation to reinforce stability and predictability. In response to Russia violating Ukraine’s sovereignty in 2014, the United States downgraded the bilateral political and military relationship and suspended most bilateral engagement with Russia on economic issues. The United States maintains cooperation with Russia in areas of global challenge where U.S. core national security interests align, such as nuclear nonproliferation, preventing humanitarian crises, and combatting violent extremism and terrorism.⁶

In December 2014, Russia’s Supreme Court issued a ruling recognizing the Islamic Group of Iraq and the Levant (ISIL, aka ISIS) as a terrorist organization and banning its domestic activity. In response to Russia instituting military operations in Syria in September 2015, ISIL and affiliated terrorist organizations have vowed retaliatory terrorist attacks in Russia. In response, Russian security services enhanced security measures at many public venues in Russia, including tourist sites. Since the Paris terrorist attacks in November 2015, bomb threats against public venues in Moscow have dramatically increased, but all of the threats were unfounded. The Russian Federal Security Service (FSB) reported no terrorist attacks in Russia in 2015, but on October 30, 2015, a Russian charter plane exploded in mid-air over Egypt due to an improvised explosive device attributed to a terrorist act.

Serious human rights abuses persisted in Russia in 2015 and 2016 as Russia continues to train and equip pro-Russian forces in regions of eastern Ukraine since the occupation and “annexation” of Crimea in March 2014. The United States considers Russia’s actions in Crimea to be unlawful and in violation of Ukrainian and international law. Authorities also conducted politically motivated arrests, detentions, and trials of Ukrainian citizens in Russia. Russian authorities continue to restrict the ability of Russia’s citizens to choose their government through free and fair elections. The government

⁶ See the U.S. State Department’s Fact Sheet, *U.S. Relations with Russia*, dated December 20, 2016, which may be accessed at www.state.gov.

passed repressive laws and selectively employed existing laws to harass, discredit, prosecute, imprison, detain, fine, and suppress individuals and organizations critical of the government. Authorities further stymied the work of nongovernmental organizations (NGOs), in part by expanding the definition of political activity to designate more NGOs as foreign agents and fine or close them down. Other human rights problems included discrimination against minorities and persons with disabilities; allegations of torture and excessive force by law enforcement; substandard prison conditions; pressure on the judiciary by the executive branch; lack of due process; extensive official corruption; violence against women; and trafficking in persons.

Russia has a history of espionage against the United States. In July 2010, ten individuals, nine of whom admitted to being Russian citizens, were expelled from the United States for conspiring to serve as unlawful agents of the Russian government within the United States. In January 2011, a former employee of the Central Intelligence Agency serving a prison sentence for a 1997 espionage conviction was sentenced to eight more years for passing information to Russia and receiving cash payments from agents of Russia through his son from 2006 to December 2008. In October 2012, a native of Kazakhstan educated in Russia and naturalized in the United States, was charged with operating as an unregistered agent of the Russian government inside the United States. He and 10 other members of a Russian military procurement network were indicated for illegally exporting high-tech microelectronics from the United States to Russian military and intelligence agencies. In January 2015, an agent of Russia's foreign intelligence agency working under non-official cover as a bank employee in Manhattan was arrested for attempting to collect economic intelligence and recruit New York City residents as intelligence sources for Russia. He conspired with a trade representative of the Russian government in New York from 2010 to 2014 and with an attaché to Russia's Permanent Mission to the United Nations from 2012 to 2013. In June 2015, a naturalized U.S. citizen born in Moscow admitted smuggling \$65 million in sensitive electronic components to Russia's Ministry of Defense and Federal Security Service. According to the FBI Special Agent in Charge, these shipments of sophisticated, high-tech components to Russia enhanced the capabilities of the Russian Intelligence Service and contributed to the modernization of Russia's military and its nuclear weapons program.

Russian civilian and military intelligence services have been implicated in a decade-long campaign of cyber operations directed at the U.S. government and its citizens, which include spear-phishing campaigns targeting government organizations, critical infrastructure, think tanks, universities, political organizations, and corporations; theft of information; and public release of some of this information. As of January 2016, Russia was seen by the U.S. intelligence community as assuming a more assertive cyber posture based on its willingness to target critical infrastructure systems and conduct espionage operations. Russia was considered likely to target U.S. interests for military and political objectives, including intelligence gathering to support Russian decision making in the Ukraine and Syrian crises. The U.S. intelligence community is confident that the Russian government attempted to interfere with the U.S. presidential election in 2016 and directed the hacking of emails of U.S. political organizations and disclosure on sites like DCLeaks.com and WikiLeaks. In December 2016, the U.S. State Department

declared persona non grata 35 Russian officials operating in the United States who were acting in a manner inconsistent with their diplomatic or consular status. This action was taken in response to Russia's interference in the U.S. election and a pattern of increased harassment of U.S. diplomats overseas over the past four years, including a significant increase in the last 12 months. The harassment involved arbitrary police stops, physical assault, and the broadcast on state television in Russia of personal details about U.S. personnel that put them at risk. Russia publishes false and misleading information in an effort to discredit the West and cast doubt on the integrity of democratic system and to defend Russia's image and its role as a responsible and indispensable global power.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential,

rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is articulated in AG ¶ 6:

Foreign contacts and interests, including but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way that is inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant has close family ties through his spouse to Russian citizens. Applicant's spouse has dual citizenship with her native Russia and with the United States. Her parents and sister are resident citizens of a city in south central Russia. Applicant testified that his father-in-law works in risk management for a Russian bank. His spouse described her father's position as “head of financial security” for a private bank. Applicant's mother-in-law works in housekeeping for a retailer that sells interior doors. As of late March 2017, Applicant's sister-in-law had just returned from China after teaching English for a year and completed college in Russia. She was unemployed and living with her parents. Applicant's spouse also maintains friendships with four female friends who have Russian citizenship but are legal residents of the United States.

Review of Applicant's contacts and connections to these foreign citizens is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or AG ¶ 7(e) or create a potential conflict of interest under AG ¶ 7(b). AG ¶¶ 7(a), 7(b), and 7(e) provide:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant understandably has close bonds of affection to his spouse, who, because of her Russian citizenship, is required by Russia to register her dual nationality with Russia and to enter and exit on a Russian passport on trips to Russia. Her U.S. residency and citizenship gives her some protections when she is in the United States, but the risk is heightened when she is in Russia to visit her family. When in Russia, she is fully accountable to Russian authorities for all obligations of a Russian citizen.

Applicant and his spouse have traveled to Russia to visit her family, and they are likely to continue to do so. Applicant testified that they have been trying to travel to Russia annually, although they were also encouraging her parents to visit them in the United States. Applicant and his spouse stayed with her parents on trips to Russia in December 2013, May 2015, and July 2016. As required by Russian law, Applicant and his spouse went to the local authorities and registered his visa and migration card during each stay and reported his occupation as a U.S. military officer. Apart from those trips, Applicant's contact with his in-laws has been by Skype, about once a month with his parents-in-law and occasionally with his sister-in-law. Even so, his spouse contacts her parents weekly. There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. *See e.g.*, ISCR Case No. 11-12659 (App. Bd. May 30, 2013.) Applicant's conversations with his parents-in-law may consist largely of pleasantries, but that is not enough to rebut the presumption. His spouse's ties to her parents are ongoing and security significant. Moreover, Applicant has indicated that he would be willing to sponsor his sister-in-law for study in the United States. His

relationships with his parents-in-law and sister-in-law, while primarily through his spouse, are not casual.

With its mixed human rights record, and political, economic and military rivalry with the United States, it is conceivable that Russia would target any Russian citizen or former citizen living in the United States in an attempt to gather valuable information from the United States. Russian intelligence operatives seek classified or economic information from U.S. businesses and/or government agencies. Applicant's connections to his in-laws in Russia create a potential conflict of interest because these relationships are sufficiently close to raise a possible security concern about his desire to help these relatives living in Russia and/or his spouse by providing classified information. AG ¶¶ 7(a), 7(b), and 7(e) apply.

Applicant's spouse has four female Russian friends who are legal permanent residents of the United States. Her closest friend, Ms. X, is a longtime friend who persuaded her to study in the United States in 2009 rather than return to Russia. Even so, it was not shown that Applicant has sufficiently close relationships or contacts with them to heighten his risk or create a potential conflict of interest. For the most part, Applicant sees these friends of his spouse only on major holidays or special occasions and only in the United States. To the extent that concerns of undue foreign influence are raised, mitigating condition AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," applies.

Russia's long history of aggressive espionage from within and outside the United States targeting classified and sensitive military and technological information, and its recent cyber hacking of emails of U.S. citizens and political entities, increase the risk that Applicant could find himself in a position of having to choose between the interests of his foreign family members and the interests of the United States. Although his in-laws in Russia are not politically involved and have no current affiliation with the Russian government, military, security, or intelligence services, Russian authorities, at least at the local level, are aware that Applicant had been an officer in the U.S. military from his registration during his three trips to Russia to visit his in-laws. Mitigating condition AG ¶ 8(a) does not apply. It provides:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States.

Applicant credibly professes loyalty to the United States. Character references include a former co-worker and two current colleagues who have been able to observe his work performance on a daily basis. They are aware of his family ties to Russia and have no concerns about his commitment to the United States and its mission. Even so, Applicant's ties to his spouse and to his in-laws in Russia are not so minimal as to present

no conflict of interest. However, he has a case for mitigation under AG ¶ 8(b) because of his “deep and longstanding relationships and loyalties in the United States.” AG ¶ 8(b) provides:

(b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant is a native U.S. citizen and lifelong resident of the United States. He comes from a family with a record of service to the United States. Three of his siblings were born on military bases, and his oldest brother and two of his sisters served on active duty in the U.S. military. Applicant enlisted in the U.S. military as a senior in high school. While he was in training, he was selected for an officer candidate program. As a member of the military, he attended college and on his graduation, he was commissioned as an officer. He served honorably on active duty for the next decade with no evidence of disciplinary infractions. While his efforts to gain some fluency in the Russian language might raise some questions, particularly in light of his subsequent marriage to a Russian citizen and travels to Russia to see her family, Applicant provided a reasonable explanation. In 2011 he was not planning to reenlist; wanted to bolster his resume for civilian employment; and he had some Russian language studies in high school. His Russian language tutor later became his spouse, but when she tutored him she was studying in the United States at a community college. He invited her to join him in a small business venture in 2012, and they began cohabiting in November 2012, initially for financial reasons although their relationship quickly turned personal. Applicant had some contact with Russian citizens when he traveled to Russia to seek potential suppliers for his and his spouse’s then pending small import retail business. However, he established no lasting contacts at that time. After they opened their retail shop in January 2013, one of their online suppliers was in Russia, but the Government did not allege any concerns in the SOR related to the business, which Applicant and his spouse closed in January 2015.

Applicant was recruited by his current employer for his present job in the defense industry. He has no foreign financial assets. He had his spouse intend to reside permanently in the United States with their two young children, who are both native U.S. citizens. Applicant’s spouse expressed her desire to retain her Russian passport for ease of travel to Russia to see her parents, and Applicant and his spouse are likely to visit her family in Russia in the future. Even so, his spouse became a U.S. citizen in April 2017, which is consistent with her intention to live permanently in the United States. As of late March 2017, Applicant and his spouse were looking to purchase their first home in the United States. Applicant’s considerable ties to the United States increase the likelihood of him resolving any conflict in favor of U.S. interests.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).⁷ Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant understandably has close bonds of affection and obligation to his spouse. There is nothing untoward about his relationship and contacts with his in-laws in Russia. He has had limited opportunity to develop a personal relationship with his parents-in-law and even less so with his spouse's sister. While acknowledging that people act in unpredictable ways when faced with choices that could be important to a family member,⁸ Applicant has been trusted with U.S. classified information in the past, and he understands the obligation to protect classified or sensitive information. After considering all the facts and circumstances, I find that it is clearly consistent with the national interest to continue security clearance eligibility for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

⁷ The factors under AG ¶ 2(a) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

⁸ As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member."

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge